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David Stahl letterhead

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Honorable Colin Powell
Secretary of State
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Honorable John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue
Washington, D.C. 20530-0001

Re: Investigation and legal assistance in case of
Santo Domingo bombing, Colombia

Dear Sirs:

On December 13, 1998, a Colombian Air Force helicopter, provided by United States military aid, dropped a US-designed cluster bomb on the hamlet of Santo Domingo. Seventeen unarmed civilians, including six children, were killed, and another 25 wounded. The Colombian helicopter pilots allege that the targeting coordinates were provided by civilian US citizens employed by a US security contractor, who allegedly filmed the incident and left the film with a US corporation to which their firm was a contractor, and that the film was subsequently altered before public dissemination by the Colombian Air Force.

As one of the attorneys for victims and concerned organizations in Colombia, and a member of the Advisory Committee of the Center for International Human Rights of Northwestern University School of Law, I write to ask that the United States fully cooperate with any appropriate requests by Colombian civilian authorities for investigative, forensic and legal assistance in regard to the possible criminal or other responsibility of US citizens and corporations in the case. I further request that the United States initiate its own investigation of the possible criminal or other responsibility of US citizens and corporations in an apparent gross violation of human rights, and subsequent cover-up.

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: DONALD A. JOHNSTON
DATE/CASE ID: 29 MAY 2002 200102988

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1. The Santo Domingo Bombing.

The bombing of the hamlet of Santo Domingo, in the eastern department of Arauca in Colombia, took place mid-morning on Sunday, December 13, 1998. At that time, the Colombian military and guerrillas were engaged in combat several kilometers outside the town, but the evidence indicates that neither combat nor combatants were in the town, whose civilian residents were preparing a bazaar to raise funds for the town school. Visibility was so clear that residents could see the pilots in the Colombian Air Force helicopters circling overhead. One helicopter dropped an object on the town, there was an explosion, and 17 people were left dead, including six children, together with another 25 civilians wounded.

For details and documentation, see the enclosed December 8, 2000 Judgment of the Tribunal of Opinion convened by the Center for International Human Rights of Northwestern University School of Law, before which I served as counsel for victims.

2. The Colombian Military Cover-Up.

The Colombian military publicized a cover story claiming that the explosion was caused by a truck bomb left by guerrillas, intended to target the Colombian military, but which exploded prematurely, killing civilians instead. Colombian Air Force spokesmen continued to publicize this version, at least through the end of the year 2000, including through a propaganda video produced in both Spanish and English, entitled, "The Great Truth About Santo Domingo."

The Colombian Air Force not only falsely accused the guerrillas, it also denied its own responsibility. On December 23, 1998, *El Espectador*, a leading Colombian newspaper, reported that the commandant of the Colombian Air Force, General Héctor Fabio Velasco, "explained as well that none of the airships used in Santo Domingo had the capability to drop bombs, ..."

General Velasco knew or should have known that statement was false. Several days earlier, on December 17, the air force liaison officer in Arauca reported to Colombia's chief of air operations that air force helicopters dropped two cluster bombs near Santo Domingo on the morning of December 13. On December 24, one of the helicopter pilots testified to the same effect.

Based on these and other discrepancies, the Tribunal of Opinion recommended that Colombian civilian authorities investigate General Velasco and other senior Colombian Air Force officers for possible participation in a cover-up and obstruction of justice. To our knowledge, no such investigation has been conducted.

Preliminary criminal investigations of the incident by Colombian army and air force courts were "archived" (closed), without prejudice, within a few months. The civilian prosecutor's investigation led in May 2000 to a recommendation that the helicopter crew be prosecuted. However, on jurisdictional grounds, the civilian prosecutor sent the case back to the military courts, which promptly closed it again.

Meanwhile Colombia's Attorney General, or *Procurador General* (as distinct from the chief criminal prosecutor, or *Fiscal General*) opened a disciplinary investigation. In June 2000 the Attorney General initiated disciplinary (not criminal) proceedings against the helicopter crew, and also against an army major accused of sacking the town.

3. Judgment of the Tribunal of Opinion.

This was the state of affairs two years after the bombing, when an eleven-member Tribunal of Opinion, convened by the Center for International Human Rights of Northwestern University School of Law, held public hearings in September 2000 in Chicago. In December the Tribunal released its judgment in Bogota. Based on a detailed review of available evidence, the Tribunal unanimously found the Colombian State responsible for the bombing. Finding that Colombian military justice lacks independence and impartiality, it recommended that civilian authorities conduct appropriate investigations.

The Tribunal also found that the helicopter that dropped the bomb was given to Colombia by U.S. military aid, and that the cluster bomb was U.S.-designed. It recommended that the Secretary of State consider applying the Leahy Law to suspend military aid to the Colombian military units involved. It further recommended that she consider declining to certify that Colombia met the human rights conditions on U.S. aid to Plan Colombia.

4. Colombian Response.

Immediately following the release of the Tribunal's Judgment in Bogota, the Colombian Air Force held a press conference in which it denied responsibility for the bombing, but announced that a three-judge military court would further review the case.

Six months later, following further testimony, the military court announced in early June 2001 (one day after NBC News interviewed President Pastrana about the case), that the helicopter crew was being placed under "measures of assurances" (pretrial restraint) pending prosecution for the bombing.

5. Alleged U.S. Civilian Involvement.

According to Colombian and U.S. press reports in mid-June 2001, members of the Colombian Air Force helicopter crew, in testimony before the military court, admitted dropping a cluster bomb near Santo Domingo, but claimed that they received the targeting coordinates from a Cessna Skymaster surveillance plane. The plane, they said, was operated by AirScan, a Florida-based security contractor to Occidental Petroleum, which has an oil pipeline in Arauca and a facility at Caño Limón. They named three U.S. citizen employees of AirScan as the crew of the Skymaster: Joe Orta, Charlie Denny and Dan MacLintock. They said that even though the Skymaster had been given "temporary" Colombian Air Force markings as FAC-520, it actually belonged to AirScan. They added that the Skymaster videotaped the entire incident and that such videotapes were kept in Occidental's facility at Caño Limón. They also complained that someone had later altered, by cuts and erasures, at least one version of the surveillance film covering the time of the bombing.

In February 2001 the State Department Country Report on Human Rights in Colombia for 2000 included the Santo Domingo case in the section entitled, "Use of Excessive Force and Violations of Humanitarian Law in Internal Conflicts."

Following the revelations of alleged U.S. civilian involvement in mid-June 2001, however, the U.S. seems not to have been responsive to Colombian requests for assistance regarding the Skymaster pilots and video. Nor, insofar as we are aware, has the U.S. initiated its own investigation regarding the possible role of the U.S. citizens and corporations.

7. Cooperation with Colombian Civilian Investigators.

The Colombian Attorney General's office has reportedly requested, through the Embassy, U.S. assistance in identifying, locating and obtaining sworn statements from the three U.S. citizens allegedly operating the Skymaster plane, and who allegedly gave the coordinates for the targets bombed by the Colombian Air Force helicopter. (*Huella de Intrusos*, RevistaCambio.com, June 18-25, 2001.)

Insofar as we are aware, the Embassy has not been fully responsive to this public indication of interest, or to subsequent informal communications. Apparently there may be concerns regarding consular assistance to U.S. citizens and the constraints of the Privacy Act, as well as a sense that jurisdictional responsibility rests with the Colombians, not with the U.S.

On behalf of my clients and the Center for International Human Rights of Northwestern University School of Law, we urge the U.S. government to cooperate as fully as the law permits with requests for investigative, forensic and legal assistance made by Colombian civilian authorities in the Santo Domingo case. It goes without saying, of course, that any such assistance must be provided only in ways that do not violate the rights of U.S. citizens under the Privacy Act and other laws.

This is a case in which judicial testimonies given by persons (Colombian Air Force personnel) in a position to know, allege that U.S. citizens and corporations have at least relevant knowledge of, and possibly involvement in, a bombing resulting in the deaths of innocent civilians. Those U.S. citizens are apparently no longer in Colombia. Without U.S. government cooperation, Colombian civilian authorities may have no certain way to locate or to obtain testimony from these witnesses. At minimum, if international or bilateral law or practice afford any means or mechanisms for legal assistance in this regard, that assistance should be provided. Moreover, if there are formal or other prerequisites or channels that must be followed, we urge the U.S. government to communicate them to Colombian civilian authorities, so that any request for legal assistance may be properly formulated and directed.

8. Investigation by U.S. Authorities.

Not only are U.S. citizens and corporations publicly accused of knowledge and possible involvement in serious crimes, but these allegations involve a military operation which received U.S. intelligence and material support, carried out by a military force receiving extensive U.S.

According to press reports in mid-June 2001, Air Scan confirmed that the three individuals had been its employees, but stated that they are no longer employed by the firm. A spokesman for Occidental reportedly stated that at the time of the incident, Occidental no longer had contractual links with either the pilots or the Skymaster plane. However, an unidentified senior official of Colombia's state oil company, Ecopetrol, reportedly claimed that while Occidental no longer paid AirScan directly, it channeled payments through the Colombian Air Force.¹

6. U.S. Government Activities in the Case.

The U.S. government has provided helpful public information and forensic assistance in the Santo Domingo case. Shortly after the bombing, on December 30, 1998, then U.S. Ambassador Kamman wrote to Senator Leahy, confirming that the U.S. government had prior knowledge of the Colombian military operation (interception of an alleged guerrilla drug plane) that gave rise to the combat outside Santo Domingo. According to the Ambassador, six of the seven Colombian Air Force aircraft used near Santo Domingo on December 12-13, 1998, including the one whose crew is now accused of dropping the bomb, came from U.S. military assistance. The U.S. had also provided at least \$4.7 million in foreign assistance to at least one of the Colombian air force units involved in the operation. Noting the Colombian military's theory of a guerrilla truck bomb and other information, the Ambassador reported that the Embassy "has not yet been able conclusively to establish the facts of the case."

In early 2000, in response to a request from the Colombian civilian prosecutor, the FBI laboratory analyzed fragments found by prosecutors at Santo Domingo. It reported that they included "exploded remains which are consistent with a twenty (20) pound United States designed AN-M41 fragmentation bomb and fuze. The resulting explosion from this type of bomb could cause property damage, personal injury or death."

The FBI report apparently contributed to the civilian prosecutor's decision in May of 2000 to bring criminal charges (which he then referred to the military courts), and to the Attorney General's decision in June of 2000 to initiate administrative charges. It was also cited in Senator Leahy's August 30, 2000 letter to Secretary Albright, requesting a review of U.S. funding of the military units involved at Santo Domingo, under the "Leahy Law." (It is our understanding that no final decision has yet been made on suspension of funding.)

In December 2000, Embassy officials were generous with their time in a lengthy and courteous briefing and discussion with members of the Tribunal of Opinion, who presented their Judgment in person to the Embassy.

In addition, we are informed that Ambassador Anne Patterson has raised the Santo Domingo case with Colombian officials on a number of occasions.

¹For details, see, e.g., Karl Penhaul, *Americans Blamed in Colombia Raid*, San Francisco Chronicle, June 15, 2001; *Justicia: Medida de Aseguramiento contra tres miembros*, El Tiempo (Bogota), June 16, 2001; *El Pais: Huella de Intrusos*, RevistaCambio.com, June 18-25, 2001.

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military aid, through units at least one of which has received significant aid. They may thus amount not only to war crimes, but also to war crimes in which the U.S. has a significant jurisdictional interest.

There appears to be a legal basis for an independent U.S. investigation of these acts. For example, jurisdiction for U.S. courts to prosecute violations of Common Article 3 to the Geneva Convention, when committed by U.S. citizens in an internal conflict outside the United States, is provided by 18 U.S.C. 2441(c)(3). In addition, U.S. courts have extraterritorial jurisdiction over crimes, such as conspiracy or accessory, which are ancillary to such war crimes. *U.S. v. Bin Laden*, 92 F. Supp. 2d 189, 197 (S.D.N.Y. 2000). These potential jurisdictional bases are not exhaustive, but merely illustrative of the legal grounds for U.S. investigative authority with regard to U.S. citizens in this case.

Because these alleged crimes involve gross violations of human rights and humanitarian law, the U.S. has not only the legal authority, but arguably a duty to investigate them under customary international human rights law. For example, the Inter-American Court of Human Rights ruled in its landmark Judgment in *Velásquez Rodríguez* (1988), "The State has a legal duty ... to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, [and] to impose the appropriate punishment ..." Par. 174.

Although the U.S. is not a party to the American Convention on Human Rights at issue in that case, the reasoning and conclusion of the Court has been so widely cited and followed that it arguably constitutes customary international human rights law. It would be ironic if the U.S. were to hold Colombia, a party to that treaty, to a higher standard of investigative diligence than we are prepared to undertake with regard to our own citizens.

In addition to law, policy considerations weigh strongly in favor of an investigation. The U.S. is deeply involved through military aid and otherwise in Colombia. It behooves us to ensure that our citizens in Colombia do not enjoy effective impunity from investigation, in cases where there is reason to suspect that they may have been involved in gross violations of human rights.

Conclusion

I thank you in advance for your consideration, and respectfully request a reply at your earliest convenience.

Sincerely,

David Stahl

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Encl w/ mailed copy: Judgment of Tribunal

cc w/out encl:

Ambassador Anne Patterson
Assistant Secretary of State Rand Beers
Acting Assistant Secretary of State Lino Gutierrez
Deputy Attorney General Bruce C. Swartz
Senator Patrick Leahy
Senator Joseph Biden
Senator Christopher Dodd
Congressman Mark Kirk
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